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Supreme Court, U.S.
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No. 01-06

In The

Supreme Court of the United States

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,

Petitioner,

v.

ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

The Parties to this Proceeding are those named in the Caption of this case and identified in Petitioner's brief. Respondent Rock-N-Around Trucking, Inc. ("RNA") is an Illinois corporation. It has no parent company and no publicly held company owns any of RNA's stock.

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REASONS FOR DENYING THE WRIT

The sole question presented by the Petition is whether the provisions of a collective bargaining agreement ("CBA") requiring contributions to be made to Taft-Hartley Fringe Benefit Funds "based on work . . . actually performed by owner-operators, who are not employees, violates 302(a)(1) of the Labor Management Relations Act, (29 U.S.C.A § 186(a)(1))," Pet. at *i*. Petitioner argues that the Seventh Circuit's opinion conflicts with this Court's decision in *Walsh v. Schlect*, 429 U.S. 401, 97 S.Ct. 679, 50 L.Ed.2d 641 (1977) as well as the Seventh Circuit's own prior decision in *Illinois Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994), which would both permit payment of monies into such Trust Funds when measured by the work performed by such owner-operators, Pet. at 9-13.

According to Petitioner, the Seventh Circuit's opinion here effectively amends the parties' contract and drastically alters the test for measuring the legality of Trust Fund contributions made for work performed by non-employees, set forth in *Walsh* and its progeny. Petitioner argues that this case is important as a matter of national labor policy because employers and unions need new guidance in crafting provisions that will satisfy the criteria of § 302 for determining the legality of payments made to jointly trusteed Trust Funds for work performed by non-employees, Pet. at 13-15.

Petitioner's claims are unfounded. Neither the Seventh Circuit's decision, nor the record below, raise the question presented by the Petition. Indeed, the Petitioner has waived his argument that the CBA provision at issue

here is lawful because it only requires contributions to be made based on the work performed by non-employee owner-drivers.

Moreover, the Seventh Circuit's ruling is not in conflict with this Court's *Walsh* decision, or the Seventh Circuit's own *Mrowicki* decision, and is supported unanimously by decisions of other Circuit Courts of Appeal which have applied the teaching of *Walsh* to conclude that contract provisions requiring that contributions be made to Taft-Hartley Funds *for* independent contractors (as were sought here) are illegal and unenforceable under LMRA § 302, 29 U.S.C. § 186. Thus, the clear guidelines which Petitioner concedes have been in place since *Walsh* (Pet. at 14-15) are still in place and remain unchanged. This case, in other words, presents no change in or departure from established law and is not important for the future of labor-management collective bargaining. The Petition should be denied.

I.

THE DECISION BELOW DOES NOT RAISE THE QUESTION PRESENTED BY THE PETITION

As it relates to this Petition, the Seventh Circuit decided three issues: (1) that the owner-drivers used by RNA are independent contractors rather than employees; (2) that the terms of the parties' CBA obligated RNA to contribute to the Funds *for* RNA's owner-drivers; and (3) that such contributions, if made, would be illegal under LMRA § 302. Yet, in reaching that last determination (which is the only one for which Petitioner seeks review) the Seventh Circuit did *not* simply opine that in order for

such contributions to be lawfully made they must always be "counted by hours of work" performed by the non-employees, as Petitioner contends, Pet. at 8. Instead, the Seventh Circuit analyzed Article 16 of the CBA, which requires Trust Fund contributions "*for* an employee covered by the Agreement" (Pet., App. A at 7a); and Article 24.1, which "clearly extends RNA's responsibilities under Article 16 . . . to the terms of employment for RNA's owner-drivers" (*Id.*); and then concluded "that there can be no mistaking the fact that the CBA attempts to impose an obligation on RNA to contribute to the Funds *for* each of its owner-drivers," *Id.* (emphasis added). However, because those owner-drivers were independent contractors (not employees), the court further concluded that RNA could not lawfully make such contributions *for* those independent contractors under the CBA, just exactly as the Ninth Circuit had concluded in *Todd v. Benal Concrete Co., Inc.*, 710 F.2d 581 (9th Cir. 1983), *cert. denied*, 465 U.S. 1022 (1984), and consistent with this Court's decision in *Walsh*, Pet., App. A at 18A.

In short, this case does not even raise the "question presented" by Petitioner, because the Seventh Circuit did *not* decide that contributions to Taft-Hartley Funds based on the performance of covered work by non-employee owner-operators were unlawful.[1] Rather, the court

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[1] It should be noted in this regard that Petitioner likewise misstates the holding of the District Court, asserting that the District Court "found that the contract language did require contributions *based on the weeks worked by the owner-drivers*", Pet. at 5 (emphasis added). In fact, the District Court found that the CBA required RNA to "remit payment to the Funds *on behalf of owner-drivers in accordance with the provisions set forth in Article*

decided that the CBA's provision requiring Trust Fund contributions *for* non-employees was unlawful and unenforceable. It did not, in other words, decide the case in the manner phrased by Petitioner's "question presented," nor did it pronounce generally that Taft-Hartley contributions in connection with work performed by non-employees are always illegal "unless . . . counted by hours of work," as Petitioner contends, Pet. at 8. It simply held that requiring such contributions *for* independent contractors is not permitted by LMRA § 302. That holding was proper in all respects and does not call for review by this Court.

II.

THE RECORD BELOW REFLECTS THAT PETITIONER HAS WAIVED HIS ARGUMENT THAT THE CBA LAWFULLY REQUIRES CONTRIBUTIONS TO BE MADE MEASURED BY THE WORK PERFORMED BY THE OWNER-DRIVERS

The crux of the Petition is that the CBA provisions found unlawful here only require contributions to be made "based on the work performed" by independent owner-drivers, and not "for the benefit of" or "on behalf

---

16" (Pet., App. B at 27a, emphasis added), and that "the plain meaning of [the CBA] establishes that RNA must make contributions *on behalf of owner-drivers in accordance with the provisions articulated in Article 16*", Pet., App. B at 30a, (emphasis added). Thus, it is Article 16 which controls, and because that article required payments to the Funds "*for* each employee covered by this Agreement" the District Court, and subsequently the Seventh Circuit, properly found that such contributions when made *for* owner-drivers would violate § 302.

of" those owner-drivers, Pet. at 7. Yet, the record below reflects that Petitioner unequivocally pursued this case before the District Court, and filed his summary judgment motion, on the theory that the CBA required contributions to be made to the Funds *on behalf of* RNA's owner-drivers.

Thus, for example, at p. 1 of the Petitioner's Memorandum in Support of his Cross-Motion for Summary Judgment, the following statement appears: "The contract contains an Article, Article 24, specifically requiring that weekly pension and welfare contributions be made *on behalf of* individuals who are described as 'owner-drivers' " (emphasis added). *See* Appendix A at 1a.[2] Similar "on behalf of" (or "for") statements appear elsewhere in that memorandum, as well as in ensuing memoranda filed by Petitioner with the District Court. *See* Appendix A at 2a, 3a, 6a, and 7a ("Contributions can be credited to the trust funds *on behalf of* these individuals"; and "This is a case in which certain individual owner-drivers have contributions made *on their behalf* and enjoy coverage under the trust funds"; and "Here the contract requires contributions to be made *on behalf of* owner drivers").

The Trust Funds' representatives were also clear in this regard in their deposition testimony. Thus, Petitioner Mazzei and Trust Fund Administrator Walter Hoff both

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[2] Respondent's Appendix A contains excerpts from two summary judgment memoranda filed in the District Court by Petitioner, in which Respondent has highlighted such "on behalf of" or "for" statements. Respondent's Appendix B contains deposition excerpts.

testified that Article 24.1 of the CBA required contributions to be paid to the Funds by RNA *on behalf of* owner-drivers. Appendix B at 10a-11a, and 13a.

Having presented this case to the District Court on an "on behalf of" theory, it is now too late to claim that the required contributions are only based on the amount of work performed. This attempted mid-stream change of horses by the Petitioner is similar to what the teamsters union attempted in *Labor Rel. Div. v. Teamsters Local 379*, 156 F.3d 13 (1st Cir. 1998). In that case, the union in its prosecution of the case (including a first appeal resulting in a remand and before an arbitrator after the remand) had consistently asserted that it was entitled to have contributions made "on behalf of" truck driver owner-operators. On the subsequent appeal, after the district court refused to enforce the arbitrator's ruling in favor of the union because the required contributions were unlawful under § 302 of the LMRA, the union reversed course and argued that contributions to its funds could be required "for hours worked" by the owner-operators, rather than "on their behalf" (156 F.3d at 16-17). The First Circuit had no problem concluding that this tardy argument had been waived in that case (156 F.3d at 17-18), and that same conclusion applies here. Thus, Petitioner cannot now dispute the Seventh Circuit's conclusion that the CBA requires RNA to make contributions "on behalf of" its owner-drivers since that is the exact result Petitioner sought below, and Petitioner likewise cannot be heard to argue that the Seventh Circuit has amended the parties' CBA by enacting such "on behalf of" language where none exists, Pet. at 8. Petitioner prevailed on the courts to interpret the CBA language in the manner he

proposed, and that necessarily required a further conclusion that the contributions which Petitioner sought to require RNA to make "on behalf of" independent owner-drivers were unlawful under § 302.

III.

THE SEVENTH CIRCUIT'S RULING DOES NOT CONFLICT WITH *WALSH v. SCHLECT* OR WITH ITS OWN PRIOR DECISION

Contrary to Petitioner's claim, the Seventh Circuit's decision does not conflict with this Court's decision in *Walsh v. Schlect,* or with its own prior decision in *Mrowicki.* Instead, the Seventh Circuit's decision is in harmony with both of those cases, as the court, itself, described when it stated (Pet., App. A at 11a-12a):

> . . . . Thus, RNA's contributions are to be made "for each employee" when that employee works at least two days of a work week. The measure of these contributions has no relation to the number of hours these individuals actually work, however, as the amounts are provided for in the CBA. Therefore, this type of contribution is not like the employer contributions the Supreme Court found to be permissible under the LMRA in *Walsh,* which were based on the number of hours worked by the employer's workers. *See Walsh,* 429 U.S. at 407-10.
>
> Because the contributions RNA is required to make under the terms of the CBA are "for each employee," and not like those upheld in *Walsh,* the employment status of RNA's owner-drivers will determine the legality of the contributions under the LMRA. As previously mentioned, employer payments to a trust for the

> exclusive benefit of that employer's employees are permissible under the LMRA. 29 U.S.C. § 186(c)(5). Thus, if RNA's owner-drivers are employees of RNA, the contributions would fall under this exception and be permissible under the LMRA. If the owner-drivers are independent contractors, however, because the LMRA, "excludes any person having the status of independent contractor from the statutory definition of 'employee,' " *Mrowicki*, 44 F.3d at 460, then any RNA contribution to the Funds on behalf of the owner-drivers would violate section 302 of the LMRA.

Other circuit court of appeals decisions further support the Seventh Circuit's conclusion here, *i.e.*, that because the owner-drivers *for* whom the CBA required contributions to be made were not RNA's employees, such contributions are barred by § 302. *See Todd v. Benal Concrete, supra; Labor Rel. Div. v. Teamsters Local 379, supra.*

Indeed, the Seventh Circuit in *Mrowicki* foreshadowed its decision on the facts of this case, when it stated that it would "agree with Mrowicki that if . . . the CBAs had required [the employer] to make contributions to the Fund 'on behalf of' or 'for the benefit' of individuals who were ineligible to receive benefits from the Fund, those contributions would have been prohibited under § 302(a)(1) of the LMRA. *Walsh v. Schlect*, 429 U.S. at 407, 97 S.Ct. at 684. As such they would be unenforceable under § 515 of ERISA, 29 U.S.C. § 1145" (44 F.3d at 461). The CBA language not present in *Mrowicki* is present here, where Article 24.1 of the CBA extended the reach of Article 16 to owner-drivers, thus requiring contributions to the Funds *for* those independent contractors

in violation of LMRA § 302. Thus the Seventh Circuit's decision here is consistent with and required by its prior decision in *Mrowicki*.

In this regard, it should be noted that Petitioner's quotation of the CBA language at issue in *Mrowicki* is incomplete and incorrect. The *Mrowicki* contract language did not provide "that the employer was required to contribute to the Fund 'for each employee covered by said agreement,' " as Petitioner asserts, Pet. at 10.[3] Rather, Article 25 of the *Mrowicki* CBA required owner-drivers to be carried on the payroll and treated as employees (44 F.3d at 454 & n.6); and that, in turn triggered the contribution requirements of that agreement's Article 11, which provided in relevant part that " '[t]he Employer agrees to contribute to [the Fund] . . . [a specified dollar amount] *for each hour worked by each employee* covered by this Agreement during the life of this Agreement' " (44 F.3d at 454, n. 3, emphasis added). Because nothing in that language required the contributions to be made "for the benefit of" those owner-drivers, the § 302 defense of illegality did not apply. *Mrowicki*, 44 F.3d at 461, *citing Walsh v. Schlect*.

Contrast the contract language in *Mrowicki* with that at issue here, as the Seventh Circuit properly did, and it is

---

[3] The language quoted by Petitioner appeared in a separate Participation Agreement entered into by the parties (44 F.3d at 454, n. 3), which played no role in the Seventh Circuit's decision. The relevant language relied on by the *Mrowicki* court appeared in Articles 11 and 25 of the CBA, as detailed in the text of this brief.

clear that section 302 bars the contributions sought in this case. Thus, Article 16 of the CBA in this case provides that weekly contributions to the Funds must be made *"for an employee* covered by this Agreement in accordance with the requirements set forth in the appropriate Appendix of this Article," Pet., App. A at 11a. The referenced appendices, in turn, require weekly contributions to the health and welfare fund *"for each employee* covered by this Agreement" who works two days in a week; and weekly contributions to the pension fund *"for each employee* who performs work on any two days in a calendar week," *Id.* This language is vastly different from that present in *Mrowicki*. For a *Mrowicki* (or *Walsh*) analysis to apply here, the CBA would need to call for contributions *"for each week* in which an owner-driver worked for two days." Instead, the language in Article 16 of the CBA, as applied to owner-drivers, unequivocally requires payments *for each owner-driver* who works for two days in a week. That is illegal given their independent contractor status, as both the Seventh Circuit and the District Court properly concluded.[4]

---

[4] Petitioner's citation to *Chicago Painters & Decorators Pension, Health and Welfare and Deferred Savings Plan Trust Funds v. Karr Brothers, Inc.*, 755 F.2d 1285 (7th Cir. 1985) (Pet. at 9) is totally inapposite. In *Karr* the parties' agreement prohibited independent contractors from performing bargaining unit work, and because the employer had violated that restriction a damage award measured by the benefit contributions the union funds would have otherwise received had employees performed the work was deemed appropriate. That case is of no relevance here.

Because the Seventh Circuit's decision is consistent with and in no way jeopardizes this Court's ruling in *Walsh*; and because the purported conflict Petitioner raises between this case and the prior *Mrowicki* decision of the Seventh Circuit does not exist, review by this Court is unnecessary. The Petition, therefore, should be denied.

IV.

THIS CASE DOES NOT HAVE FAR-REACHING IMPLICATIONS

The Seventh Circuit's decision here can best be described as routine and non-controversial. Once RNA's owner-drivers were found to be independent contractors (a finding not contested here by Petitioner), the decision that the CBA's requirement that RNA contribute to the Funds *for* each owner-driver was unlawful followed just as night follows day. No other conclusion is possible under *Walsh* and its progeny, including *Mrowicki*, *Todd v. Benal Concrete* and *Labor Rel. Div. v. Teamsters Local 379*. Petitioner, in other words is absolutely wrong in his claim that the practical effect of the Seventh Circuit's decision here "is to overrule this Court's opinion in *Walsh v. Schlect*," Pet. at 8.

In fact, just the opposite is true. The Seventh Circuit's decision is not only consistent with *Walsh*, it is required by *Walsh*. That being so, Petitioner's claim that this case is an important one deserving of review also falls by the wayside. The clear guidelines regarding the type of contract language needed to permit Trust Fund contributions to be made when independent contractors perform work, which Petitioner concedes were in place after *Walsh* (Pet.

at 14-15), are still in place. Simply put, requiring such contributions *for* or on behalf of independent contractors remains illegal; requiring contributions measured by the amount of work performed by independent contractors is not illegal. Those guidelines are not challenged or changed by the Seventh Circuit's decision here.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this Honorable Court deny the Petition.

Respectfully submitted,

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APPENDIX A

EXCERPTS FROM PETITIONER'S MEMORANDA FILED WITH THE DISTRICT COURT

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund,	
Plaintiff,	Judge Coar
v.	Magistrate Judge Bobrick
ROCK-N-AROUND TRUCKING, INC., an Illinois corporation,	
Defendant.	

NO.: 99 C 1975

PLAINTIFF'S MEMORANDUM IN SUPPORT OF CROSS-MOTION FOR SUMMARY JUDGMENT

Statement of Facts

Teamsters Local Union 786 and Rock N' Around Trucking, Inc. (hereinafter "Rock N' Around") are parties to a labor agreement requiring contributions to the plaintiff, Welfare and Pension Funds. The contract contains an Article, Article 24, specifically requiring that weekly pension and welfare contributions be made ***on behalf of*** individuals who are described as "owner-drivers."

* * *

Summary of Argument

It is the position of the Trust Funds that the Collective Bargaining Agreement in this case requires defendant to remit contributions *on behalf of* owner-drivers employed by that company. The defendant has disputed the audit findings on the basis of certain coverage defenses. Those defenses are based on a Collective Bargaining Agreement with Local 731 I.B.T. that does not cover owner-drivers, and written forms purporting to waive participation in the Local 786 Funds.

It is the plaintiff's position that the contract between defendant and Local 731 I.B.T. does not alter the obligations imposed by Article 24 of the contract with Local 786 1.B.T. (Pl. Ex. No. 1.) It is further plaintiff's position that the waiver forms constitute extrinsic evidence and are inadmissible and fail to alter the unambiguous terms of the contract.

* * *

> and perform work exclusive for the Employer shall be covered by Article 16 – Health & Welfare and Pension and it shall be the Employer's responsibility to make contributions on their behalf.
>
> (Pl. Ex. No. 1, p. 32.)

The above language is clear and unambiguous and imposes a condition upon the defendant to timely remit contributions to the Trust Funds *for* owner-drivers employed by the defendant.

Initially, defendant raised an objection as to the purported legality of contributions made on behalf of individuals who drive and make deliveries of materials for defendant, but to do so through the use of their own trucks.

The Seventh Circuit has held that contributions made on behalf of owner-drivers to Taft-Hartley Trust Funds such as plaintiff's Funds for owner-operators are appropriate and not illegal. Section 302(a)(1) of the L.M.R.A. (29 U.S.C. § 186(a)(1)); *Illinois Conference of Teamsters and Employers Welfare Fund v. Mrowicki*, 44 F.3d 451 (7th Cir. 1994). In that case, the Court analyzed the opinion of the United States Supreme Court in *Walsh v. Schlect*, 429 U.S. 401, 97 S.Ct. 679, 50 L.Ed. 2d 641 (1977). In *Walsh*, the Court found it appropriate for an employer to be liable for payment of a subcontractor's employees' contributions to a Trust Fund. The Supreme Court's analysis of the issues under Section 302 is applicable here as Rock N' Around is obligated by a contract to pay contributions ***on behalf of*** owner-drivers who are eligible to receive benefits from the Trust Funds. There is no legal reason why the defendant's payments ***on behalf of*** owner-drivers should be excused merely because the employees in question own their own trucks.

* * *

This is a case in which the unambiguous language of the Collective Bargaining Agreement requires the Employer to make contributions ***on behalf of*** individuals who lease or operate trucks for the Employer. The obligations to make payments to the Funds imposed by Article 24 of the Local 786 Agreement cannot be altered by any

side letter or agreement. The cases sited above have made it clear that the Trust Funds are entitled to collect these monies, as they are obligated to provide benefits.

* * *

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI, Trustee of the Local 786 Building Material Teamsters and Helpers Welfare Fund and Local 786 Building Material Teamsters and Helpers Pension Fund, Plaintiff, v. ROCK-N-AROUND TRUCKING, INC., an Illinois corporation, Defendant.	NO.: 99 C 1975 Judge Coar Magistrate Judge Bobrick

RESPONSE MEMORANDUM IN SUPPORT OF PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT AND IN OPPOSITION TO DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

Summary of Argument

Rock-N-Around Trucking, Inc. (Defendant) signed an agreement recognizing Teamsters Local 786 as bargaining agent for its employees. Both parties have provided the document to the Court. (Plaintiff's Exhibit No. 1, Defendant's Exhibit No. A-8) The Plaintiff trust funds seek to enforce Articles 16 and 24 of that agreement as they are the beneficiaries of the promises to pay fringe benefit contributions by the Defendant.

The Defendant responds to the claims for these contributions with the following theories:

1. The contract does not mean what it says.

2. The obligations of Articles 16 and 24 have been waived.

3. If the contract means what it says and there has been no waiver of obligation, the obligation should be excused as it is illegal under the Taft-Hartley Act 302(c)5.

* * *

The Defendant agreed to wage and working condition provisions imposed by the contract that required it to treat drivers who owned their trucks as employees. The Union could have a contract which provided for no subcontracting and no owner-drivers. Instead the Agreement calls for restrictions on subcontracting (Article 17) and employee benefits *for* drivers who own their own trucks (Article 24).

The plain and unambiguous language of the Agreement lends itself to only one interpretation, that work performed by drivers who own their own trucks is subject to certain conditions of the contract. *Ill. Conference of Teamsters Welfare Fund v. Mrowicki*, 44 F3d 451, 459 (7th Cir. 1994). Owner-drivers join the Union, pay dues and are entitled to compensation separate and apart from the payment for the use of their vehicle, at least equal to the amount that would have been paid to an employee driver. (Plaintiff's Exhibit No. 1, Article 24.1-4, pg. 32)

* * *

b.

The requirements of Article 24 of the contract do not violate Federal Law.

Defendant argues That Plaintiff claims are barred by 29 U.S.C. 186 the Labor Management Relations Act ("LMRA"). This argument is without merit. As we have argued above, owner-drivers are paid for the use of their equipment and driving services. The payments for driving are compensation for the work of an employee.

Plaintiff has identified through the audit procedure and Paulette Newman's deposition the name and social security number of all owner-drivers. Contributions can be credited by the trust funds ***on behalf of*** each of these individuals. This fact in and of itself distinguishes this matter from cases cited by Defendant. These individuals qualify for benefits from the trust fund earned while they are working as employees paid to drive their trucks. This is a case in which certain individual owner-drivers have contributions made ***on their behalf*** and enjoy coverage under the trust funds. (We note Paulette Newman herself participates in the Local 731 funds, despite performing no contract work.)

The Defendants raise the issue of the LMRA on the basis that Owner-drivers cannot participate in Plaintiff trust funds when some already do. (Plaintiff's Exhibit No. 10, contribution report).

The purpose of the LMRA prohibition is to bar payments except those remitted to a trust fund for benefits. Here the contract requires contributions to be made ***on behalf of*** owner-drivers, who Defendant is required to

treat as employees by the contract, to trust funds that provide employee benefits.

* * *

APPENDIX B

EXCERPTS FROM THE DEPOSITIONS OF PETITIONER AND FUNDS ADMINISTRATOR HOFF

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI,	)	
	)	
Plaintiff,	)	No. 99 C 1975
vs.	)	Judge Coar
	)	
ROCK-N-AROUND TRUCKING, INC.,	)	
	)	
Defendant,	)	

The deposition of LOU MAZZEI, called by the defendant for examination, pursuant to notice and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Suzanne Thalji, CSR and Notary Public in and for the County of Cook and State of Illinois, on October 7, 1999, at 10:05 a.m., at Two First National Plaza, 20 South Clark Street, 24th Floor, Chicago, Illinois.

* * *

[4] MR. CASEY: Let the record reflect this is the deposition of Lou Mazzei as trustee for the Local 786 pension and health and welfare funds in the case entitled Lou Mazzei as trustee versus Rock-N-Around Trucking, Case No. 99 C 1975, pending before Judge Coar in the Northern District of Illinois.

LOU MAZZEI,

having been first duly sworn, was examined and testified as follows:

* * *

[27] Q With respect to the requirements of Article 24.3, what is your understanding as trustee of the Local 786 pension funds regarding a signatory employer's responsibility to make contributions to the trust funds on behalf of union members who are certificated carriers? That was a long question. I apologize.

A If they work for the employer, they will pay health and welfare and pension by that employer who pays the benefits.

Q So, for example, if Rock-N-Around were to use an owner-driver who was a member of Local 786 and a certificated carrier, then Rock-N-Around is required under this clause to pay contributions to the funds on behalf of that owner-driver, correct?

A Right.

* * *

[28] Q Now, let's look at 24.1 and specifically 24.1-4. We can take a moment, just make sure you read those.

A Okay.

Q What is your understanding of what 24.1-4 requires of signatory employers such as Rock-N-Around who use owner-drivers?

A They would have to have separate checks for wages and equipment like it states, basically the [29] same thing, that if the owner-operator is working for the employer, that the benefits are to be made.

Q So the obligation really is the same as what we just talked about?

A Yes.

Q That the Rock-N-Around or whoever the signatory employer is who uses these owner-drivers has to make benefit contributions to the trust funds on behalf of the owner-drivers? Is that your understanding?

A Yes, the employer does.

* * *

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

LOU MAZZEI,	)	
	)	
Plaintiff,	)	No. 99 C 1975
vs.	)	
	)	
ROCK-N-AROUND TRUCKING, INC.,	)	
	)	
Defendant,	)	

The deposition of JEFFREY W. HOFF, called by the defendant for examination, pursuant to subpoena, and pursuant to the Rules of Civil Procedure for the United States District Courts, taken before Maria W. Starchvill, CSR and Notary Public in and for the County of Cook and State of Illinois, on October 15, 1999, at 8:07 a.m., at 20 South Clark Street, 24th Floor, Chicago, Illinois.

* * *

[4] MR. CASEY: For the record, I will state that this is the deposition of Jeffrey Hoff in the matter of Lou Mazzei as trustee of Local 786, Pension and Health and Welfare Fund vs. Rock-N-Around Trucking, Inc., Case Number 99 C 1975 pending before Judge Coar.

JEFFREY W. HOFF,

having been first duly sworn, was examined and testified as follows:

* * *

[17] Q Now, in your capacity as Fund Administrator, have you had occasion to interpret Article 24 of the agreement as it applies to the Funds?

A Maybe – how so? I'm not following you.

Q Have you ever had occasion to look at Article 24 and say to yourself or to someone else, Okay, this is what Article 24 means in terms of making contributions to the Funds.

A No.

Q Do you yourself have an understanding as Fund Administrator as to what Article 24 requires signatory contractors like Rock-N-Around Trucking to do when they use owner/drivers in terms of contributions to the Funds?

A I'm sorry, can you repeat that?

Q That was bad. Do you yourself have an understanding of what Article 24 would require a company like Rock-N-Around Trucking to do for owner/drivers with respect to the Funds?

A Yes.

Q What's that understanding?

[18] A As I stated earlier, any owner/driver that is hauling for a company, say for Rock-N-Around, Rock-N-Around is obligated to make contributions on their behalf if they work more than two days a week.

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